

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

THOMASINA FERGUSON,

PLAINTIFF,

v.

CITY OF ROCHESTER SCHOOL DISTRICT,

DEFENDANT.

**NOTICE OF AND PETITION FOR
REMOVAL**

CIVIL ACTION No.:

Defendant City of Rochester School District, a/k/a Rochester City School District (“RCSD”), by and through its attorneys, hereby files this Notice Of and Petition For Removal of the above-entitled action to the United States District Court for the Western District of New York from the New York State Supreme Court, Monroe County, where the action is now pending, as provided by Title 28, United States Code, Chapter 89, and states:

1. This action was commenced by filing of the Summons and Complaint on or about August 4, 2004. The action was commenced in the New York State Supreme Court, Monroe County, and is now pending therein.

2. Plaintiff Thomasina Ferguson personally served the Summons and Complaint on Defendant RCSD at 131 West Broad Street, Rochester, New York on August 9, 2004. Copies of the Summons and Complaint bearing Index No. 8876-04 are attached hereto as **Exhibit A**.

3. No further proceedings have been had herein in the state court.

4. The Complaint alleges denial of equal protection and due process of law in allegedly selectively allowing certain, but not all, individuals to rescind their election to take the RCSD’s Voluntary Employee Separation Agreement (“VESA”) benefits. Complaint, ¶10.

5. Claims for denial of equal protection and/or due process of law arise under the Fourteenth Amendment to the U.S. Constitution.

6. The Court has original jurisdiction of the above-described claim under 42 U.S.C. Section 1983 and 28 U.S.C. Sections 1331 and 1343(3), in that the Complaint alleges claims under the U.S. Constitution, thereby raising a federal question.

7. The Federal nature of this claim is also evident because Ferguson requests attorney's fees, presumably under 42 U.S.C. Section 1988.

8. The above-entitled action, therefore, may be removed to this Court pursuant to 28 U.S.C. Section 1441.

9. Notwithstanding this Notice of and Petition for Removal, RCSD does not waive any defenses to Ferguson's claim(s), nor does RCSD concede that Ferguson has adequately pled any claims upon which relief may be granted.

10. This notice is filed with this Court within 30 days after service on Defendant RCSD of the Summons and Complaint in the above-entitled action.

11. A copy of all process, pleadings, and orders served upon RCSD is filed with this notice.

12. RCSD will give written notice of the filing of this Notice Of and Petition For Removal as required by 28 U.S.C. Section 1446(d).

13. A copy of this Notice will be filed with the Clerk of the New York State Supreme Court, Monroe County as required by 28 U.S.C. Section 1446(d).

WHEREFORE, Defendant City of Rochester School District respectfully requests that the above-entitled action be removed from the New York State Supreme Court, Monroe County, to this Court.

Dated: Rochester, New York
August 30, 2004

/s/ Robert C. Weissflach
Attorney for Defendant
City of Rochester School District
HARTER, SECREST & EMERY LLP
1600 Bausch & Lomb Place
Rochester, New York 14604-2711
Telephone: (585) 231-1454
rweissflach@hselaw.com

To: Theodore S. Kantor, Esq.
Attorney for Plaintiff
Thomasina Ferguson
BILGORE, REICH, LEVINE & KANTOR
16 East Main Street
Rochester, New York 14614
Telephone: (585) 262-4700